

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KENNETH HANKIN, et al.,
Plaintiffs,
v.
THE CITY OF SEATTLE,
Defendant.

No. C00-1672MJP

ORDER STRIKING MOTION FOR
DIRECTED VERDICT

This matter comes before the Court on Defendants Motion for Directed Verdict under Fed. R. Civ. P. 50(a). (Dkt. No. 431). Defendants moved for directed verdict by filing their motion on the electronic filing system at 11:33 a.m. on January 24, 2007, after the parties had rested. When Plaintiffs rested, no oral or written Rule 50(a) motion was made. When Defendant finished its case, no such motion was made. Plaintiffs called a rebuttal witness. Defendant called a rebuttal witness. Again, no oral or written motion was made. The court announced to the jury that the testimony was concluded and that they would return after lunch for instructions and closing argument. No motion was made. When Defendant electronically filed its Rule 50(a) motion, the Court was working with the parties on jury instructions in chambers. Defendant's counsel did not mention the motion to the Court during that conference. At 1:15 p.m., the Court heard the parties objections to the instructions. Again, no mention of the motion was made. At 1:30, the Court read the instructions to the jurors and then the parties gave closing arguments. At no time while the Court was working with the parties on jury instructions, when the Court took exceptions to those instructions, or before or during the time for closing arguments did Defendants ever orally move for directed verdict or

1 mention the electronically filed document.¹ At some point on January 24th, Defendant's counsel
2 handed a working copy of the motion to the Court's in-court deputy. It was not until other Court
3 staff noticed the electronic filing around 1:15 p.m. that the Court became aware of the motion. At no
4 time was the Court apprised of the substance of the motion. Plaintiffs were not made aware of the
5 motion until the Court mentioned it after closing arguments.

6 The Court STRIKES Defendant's motion as untimely. Fed. R. Civ. P. 50(a), which governs
7 judgment as a matter of law in jury trials, requires that any motion for a directed verdict be made
8 before the case is submitted to the jury. Fed. R. Civ. P. 50(a)(2).² The advisory committee's notes to
9 Rule 50(a)(2) state that "the purpose of this requirement is to assure the responding party an
10 opportunity to cure any deficiency in that party's proof that may have been overlooked until called to
11 the party's attention by a late motion for judgment." Fed. R. Civ. P. 50(a)(2) advisory committee's
12 notes (1991 amendment). As the Ninth Circuit has explained, the language in Rule 50(a)(2) is
13 intended "to prevent the moving party from waiting until it is too late for the non-moving party to
14 perfect its case." McSherry v. City of Long Beach, 423 F.3d 1015, 1020 (9th Cir. 2005). The major
15 purpose of Rule 50(a) is "to call the claimed deficiency in the evidence to the attention of the court
16 and to opposing counsel at a time when the opposing party is still in a position to correct the deficit."
17 Waters v. Young, 100 F.3d 1437, 1441 (9th Cir. 1996). The rule prevents opposing counsel from
18 being "'ambushed' or 'sandbagged' regarding the sufficiency of the evidence adduced at a point in the
19 trial proceedings when it is too late to address possible insufficiencies." Crawford v. Andrew
20 Systems, Inc., 39 F.3d 1151 (11th Cir. 1994).

21 Defendant brought its motion at a point when it was too late for Plaintiffs to address or
22 correct the alleged insufficiencies in their case. The Court was not aware of the motion until just

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24 ¹ The Court does not have access to the electronic filing system when on the bench or when
working in conference with the parties in chambers.

25 ² Fed. R. Civ. P. 50(a) was recently amended. The current version of the rule provides, in
26 part: "A motion for judgment as a matter of law may be made at any time before the case is submitted
to the jury." Fed. R. Civ. P. 50(a)(2). The advisory committee's notes to Rule 50(a) state that the
changes to the Rule are intended to be stylistic only.

1 before it gave the jury its final instructions. And Plaintiffs were unaware of the motion until the jurors
2 had been excused to deliberate. In its motion, Defendant does not explain why it waited to bring the
3 motion nor does it identify any exceptional circumstances warranting the lack of notice to the Court
4 or opposing counsel. In this circumstance, just electronically filing the motion is insufficient. The
5 Court therefore STRIKES the motion as untimely. Defendants have waived any future motion for
6 judgment notwithstanding the verdict. See Zhang v. Am. Gem Seafoods, Inc., 339 F.3d 1020, 1028-
7 29 (9th Cir. 2003).

8 Dated: January 26, 2007.

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12 Marsha J. Pechman
13 United States District Judge
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